COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 048496-00**

Patricia Descoteaux	Employee
Raytheon Company	Employer
Raytheon Company	Self-insurer

REVIEWING BOARD DECISION
(Judges Horan, Carroll and McCarthy)

APPEARANCES
Howard H. Swartz, Esq., for the employee
Joseph S. Buckley, Jr., Esq., for the self-insurer

HORAN, J. The employee appeals the denial and dismissal of her claim.[1] Her emotional injury and incapacity allegedly resulted from a series of events associated with her employment.[2] We affirm the decision because the employee failed to offer evidence sufficient to sustain her burden of proving that her employment was the predominant contributing cause of her emotional disability.[3]

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[1] The employee correctly points out the judge erred when he wrote that, among other things, she was required to prove "that sexual harassment occurred in the workplace" in order to prevail. (Dec. 67; Employee br. 5.) However, the error is harmless because the record contains no medical evidence sufficient to support a finding of personal injury as contemplated by the statute.

[2] The details of the employment events are not relevant in light of our decision. We note the judge also found some of the alleged events constituted bona fide personnel actions. (Dec. 55-74.) There was no finding the employer intended to cause the employee emotional distress, and no argument on appeal concerning this issue. See G. L. c. 152, § 1(7A)(last sentence.) Moreover, there is no argument advanced that such intentional conduct would eliminate the need to produce medical evidence to satisfy the "predominant contributing cause" standard.

[3] General Laws c. 152, § 1(7A), provides, in pertinent part:

> Personal injuries shall include mental or emotional disabilities only where the predominant contributing cause of such disability is an event or series of events occurring within any employment.

The only medical evidence was provided by the § 11A impartial psychiatrist, Dr. Lloyd Price.[4] Dr. Price's causal relationship opinion was clear and unequivocal, in answer to questions by counsel for the employee:

> Q. Do you have a professional opinion, to a reasonable degree of medical certainty, as to the causal relationship between the events of October 20, 2000 and those diagnoses you just outlined for us?
>
> A. Yes, I do.
>
> Q. What is your professional opinion?
>
> A. Workplace events. By that I mean, not only the event of 10/20/00, but the entire sequence of workplace events *combined with preexisting and anxiety related to relationship issues*[5] was a major cause of these diagnoses.[6]

(Dep. I, 38.)(Emphasis added).

> Q: Do you have a professional opinion, to a reasonable degree of medical certainty, as to whether or not the events of October 20, 2000 [the alleged work events] were a major, yet, not necessarily the predominant cause of her psychiatric problems and disability as it existed when you met with her on September 21, 2001?
>
> A: I do have such an opinion.
>
> Q: What is your opinion?

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[4] The decision is silent on whether the employee attempted to introduce additional medical evidence. The employee argues the impartial medical examiner's opinion satisfied her burden of proof under the statute; she raises no appellate issue concerning any attempt to introduce additional medical evidence. See G. L. c. 152, § 11A(2).

[5] Elsewhere in his deposition, Dr. Price noted the employee was divorced, had prior psychiatric treatment from 1982-1983 related to her marriage, and underwent additional psychiatric care in 1992 and 2000 "related to issues of trust and anxiety in a new relationship." (Dep. I, 7-8.)

[6] At the conclusion of his deposition, Dr. Price iterated that "some of the [the employee's] symptoms of anxiety and depression" were exhibited prior to October 20, 2000. (Dep. II, 45.)

A: As stated before, that the events of 10/20/00 combined with the totality of events that happened in the workplace as reported, which were major, although not necessarily the predominant cause of her psychiatric disorder and disability.

(Dep. I, 41.)

Q: It was also your opinion – and correct me if I'm wrong – that those events which occurred on October 20th, at least in your professional opinion, were the major, yet not necessarily the predominant, cause of her emotional problems after that date when you saw her in September of 2001?

A: Were a major?

Q: A major, right?

A: Yes.

Q: But not necessarily the predominant?

A: Correct.

(Dep. II, 12.)

Dr. Price's medical opinion that the work events, though major, are "not necessarily the predominant" cause of the employee's emotional disability fails to carry the employee's burden of proof under the third sentence of § 1(7A). May v. MCI Framingham, 19 Mass. Workers' Comp. Rep. ___ (July 8, 2005); see Joyce v. City of Westfield, 15 Mass. Workers' Comp. Rep. 101, 106 (2001). This is not a case in which the work events were the *only* cause of the claimed emotional disability, as the employee's history of pre-existing psychiatric problems is manifest throughout the medical evidence. (Dep. I, 7-8, 19-21.) In "one cause" emotional disability cases, medical evidence establishing a causal link is sufficient to affirm a benefit award. Bouras v. Salem Five Cent Savings Bank, 18 Mass. Workers' Comp. Rep. 191, 193 (2004)(medical opinion that only work causes contribute to emotional disability satisfies "predominant contributing cause"

standard); Sawicka v. Archdiocese of Boston, 14 Mass. Workers' Comp. Rep. 362, 370 (2000)("only cause" must satisfy predominant contributing cause standard). Nor is this a case where the employee's emotional disability stemmed from a *physical* work injury, requiring different analyses altogether. See Murphy v. Commercial Union, 10 Mass. Workers' Comp. Rep. 263 (1993)(simple "as is" standard of causation applies to mental sequelae of work- related physical injuries). Cf. Lagos v. Mary A. Jennings, Inc., 11 Mass. Workers' Comp. Rep. 109, 111 (1997)(where mental sequelae of physical injury combine with pre-existing psychiatric condition, fourth sentence of § 1(7A), "a major" standard of causation applies).

This case is an emotional injury claim involving both work and non-work-related causes. The legislature has excluded these claims from the definition of "personal injury"[7] under our act, unless employment events (not deemed to be bona fide personnel actions) are "*the predominant contributing cause*" of the claimed emotional disability. See May, supra.

Because the record contains no medical evidence which, if credited, could carry the employee's burden of proof under the statute, we affirm the denial of benefits.

So ordered.

Mark D. Horan	Martine Carroll	William A. McCarthy
Administrative Law Judge	Administrative Law Judge	Administrative Law Judge

Filed: August 8, 2005

[7] Our Appeals Court has recently held that in a "predominant cause" emotional disability claim, once liability and causation are contested, the employee's burden of proof is set. "General Laws c. 152, § 1(7A), thus defines, in part, what the employee's case must be in such circumstances; it does not create an affirmative defense that must be pleaded and proved [by an insurer or self-insurer]." Jackson v. Roxbury Community College, Mass. App. Ct., No. 03 – J – 332, slip. op. at 4 (June 1, 2005)(single justice).